Durham Planning Academy

May 17, 2016



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Today's Agenda

- Legal Framework of Planning
- Zoning
- Unified Development Ordinance





I am not a lawyer, nor do I play one on TV



Legal Framework of Planning

- Enabling Legislation
- ☐ State Law and Local Ordinances
- □ Case Law



Home Rule vs. Dillon's Rule

- Home Rule local governments can do what they want as long as it doesn't violate state law
- Dillon's Rule local governments can only do what the state explicitly says you can
 - NC one of the Dillonest of Dillon's Rule states



Enabling Legislation

- State Legislature grants counties and municipalities zoning powers
 - Height
 - Density/Lot Size
 - Uses
 - Building Placement
- Does not include
 - Affordable Housing
 - Single Family Home Aesthetics



Other Delegated Powers

- Subdivisions
- ☐ Signs
- Riparian Buffers
- □ Transportation (roads)
- Development Plans
 - Durham only



Case Law

- Case law, rulings handed down by courts, have great influence on planning matters
- State courts have historically favored private property rights
- Several federal cases have guided planning over last 100 years
 - Most cases involve property rights



Prominent Case Law

- ☐ Euclid v. Ambler (1926)
 - Supreme Court ruled zoning is constitutional
 - * Appropriate use of police power
- Most Supreme Court cases involve takings
 - ❖ A taking is when the government seizes property *or property value* without due process or compensation
 - Pennsylvania Coal Co. v. Mahon (1922)
 - ❖ Penn Central v. New York City (1978)
 - * Keystone Coal v. DeBenedictis (1987)



Prominent Case Law

- "Rational Nexus" is of great importance
 - Nollan v. California Coastal Commission (1987)
 - Lucas v. SC Coastal Council (1992)
 - ❖ Dolan v. Tigard (1994)
 - * Koontz v. St. Johns (2013)



Nollan v. California Coastal Commission (1987)



Nollan v. California Coastal Commission (1987)

Government cannot condition permit approvals on exactions that do not "substantially advance" public interest



Lucas v. South Carolina Coastal Council (1992)

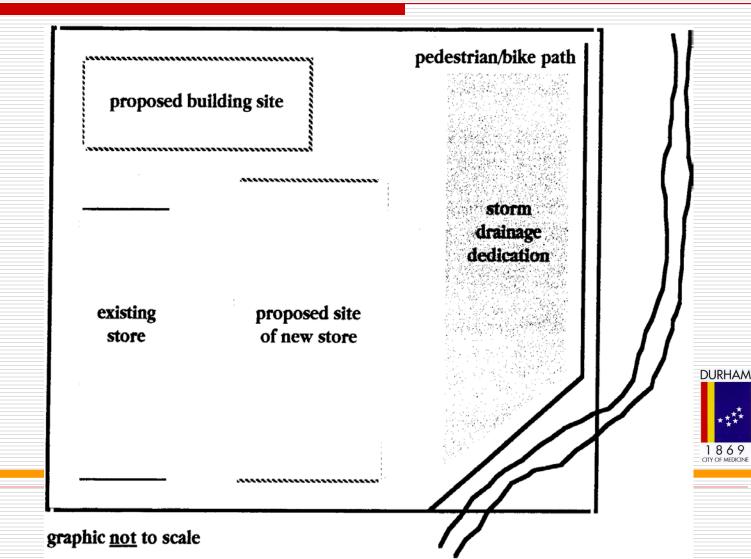
Part of "Wild Dunes" resort on Isles of Palms, SC, 11/94 sign in photos Row of Large House Row of Large Houses cul de sac street: "Beachwood East" #12 #13 E Lucas 4 (vacant) #11 #10 #14 #15 DEAD large Lucas large large large ZONE square (vacant) house house house house Charleston, SC Atlantic Ocean about 15 miles

Lucas v. South Carolina Coastal Council (1992)

- Where a regulation deprives a property owner of all value of the land, it is a taking
- "Categorical taking" rule



Dolan v. Tigard (1994)

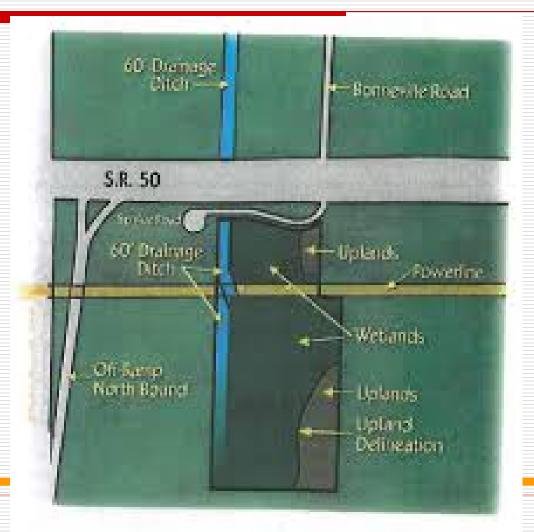


Dolan v. Tigard (1994)

- If a rational nexus is established, the exaction must be proportional
- An exaction must be rough proportionally to the impact being sought by the property owner



Koontz v. St. John's (2013)





Koontz v. St. Johns (2013)

- An exaction must pass both the Nollan and Dolan tests to be valid
- Governments cannot use the permitting process to exact improvements not relevant to the proposed development



Prominent Case Law

- ☐ Belle Terre v. Boraas (1974)
 - Cities and Counties can define "family"
 - ❖ Subsequent federal law, such as fair housing, is eroding "family" statutes
- □ Southern Burlington NAACP v. Mount Laurel (1975)
 - ❖ NJ case stating that cities must allow affordable housing

Prominent Case Law

- □ Renton v. Playtime Theatres (1986)
 - Cities can regulate "adult establishments"
- ☐ Kelo v. New London (2005)
 - Eminent domain can be used to transfer land from one private owner to another
- □ Reed v. Gilbert (2015)
 - Cities cannot regulate signs based on content



Legal Summary

- State enabling legislation allows cities and counties to do planning and zoning activities
- NC a Dillon's Rule state state law trumps local law
- Case law creates important legal precedence
 - Federal courts limit takings
 - * NC emphasis on private property rights



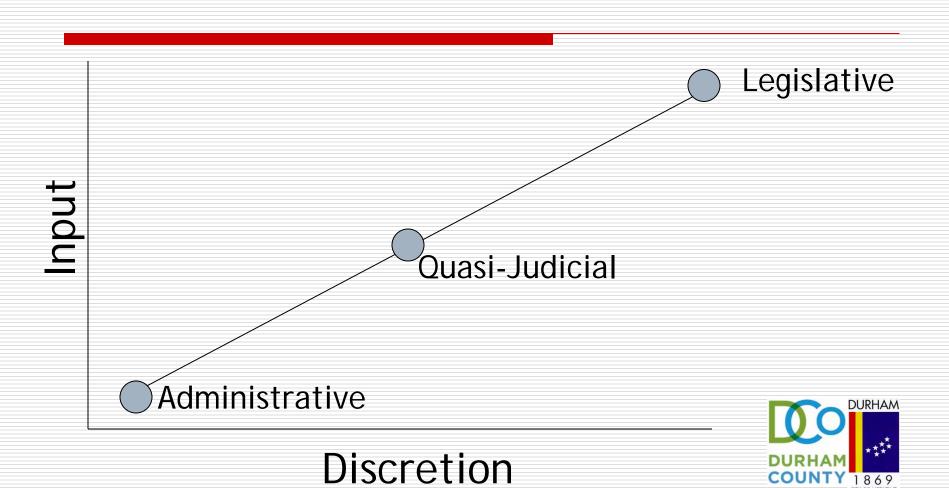
Zoning and Other Planning Approvals



Three Types of Approval Processes

- Legislative
- Quasi-Judicial
- Administrative





Legislative Decisions

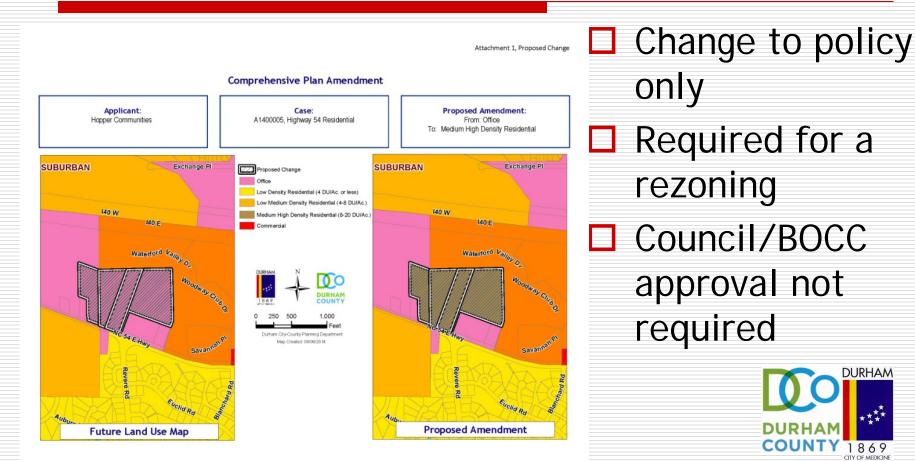
- City Council
- Maximum discretion
- Maximum public input
- Legislative authority
 - Small area plan
 - Plan amendment
 - Zoning map change
 - UDO text amendment
 - Street closings/renamings



NIMBY and NIMTOO

- NIMBY Not In My Back Yard
 - * Residents fighting development near their homes
- NIMTOO Not In My Term Of Office
 - **Elected official perspective because either:**
 - The proposed development/action will not take place while they are in office (can't do ribbon cutting)
 - They don't want the development/action while they are in office (happened on their watch)

Plan Amendment Example



DURHAM

What is zoning?

- Controls the rules of development on any piece of land in the City or County
- Almost all rules the same in City or County
- □ Enforced through the Zoning Map and the Unified Development Ordinance (UDO)



70 70 RS-8 PDR 10.000 RU-5(2) East End Ave 7 70 RS-8 RS-20 CC **PDR** 10.000 RU-5 PDR 10.000 PDR 10:000 CG(D) CG(D) RS-20 GC(D) CN **EAST END** LAND USE ANALYSIS ZONING RS-20 CC CG Study Area Boundary City of Durham Limits ndustrial Industrial Light Commercial Center Commercial General Commercial Neighborhood Planned Development Residential-HDR (8 - 12 du/ac) Residential Urban-5(2) Residential Urban-5 1,000 2,000 Residential Suburban-8 Residential Suburban-20

Zoning Map



Why change the zoning?

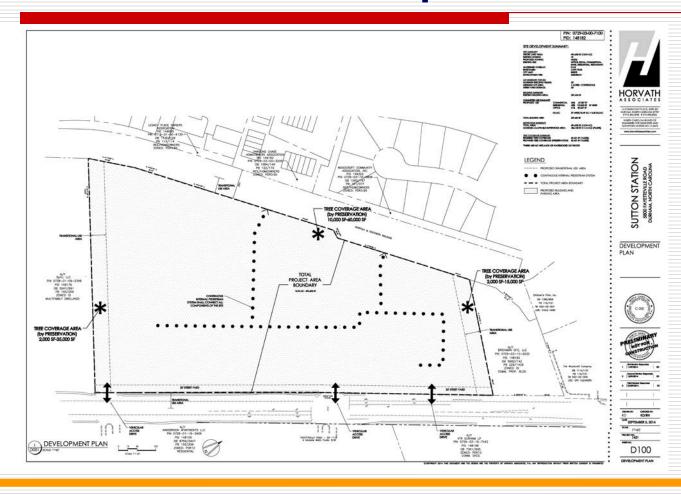
- Use not allowed in current zoning district
- Intensity not allowed in current zoning district
 - Density (most often)
 - Flexibility



What is a Development Plan?

- Commitments equal to or greater than ordinance requirements
- Only required in CC, MU, and PDR districts
- Requirements
 - Density
 - Building and Parking Envelopes
 - Project Boundary Buffers
 - Stream Crossings
 - Access Points
 - Preservation Areas (streams, trees, wetlands, etc.) UNTY

What is a Development Plan?





Zoning Map Change Application Timeline

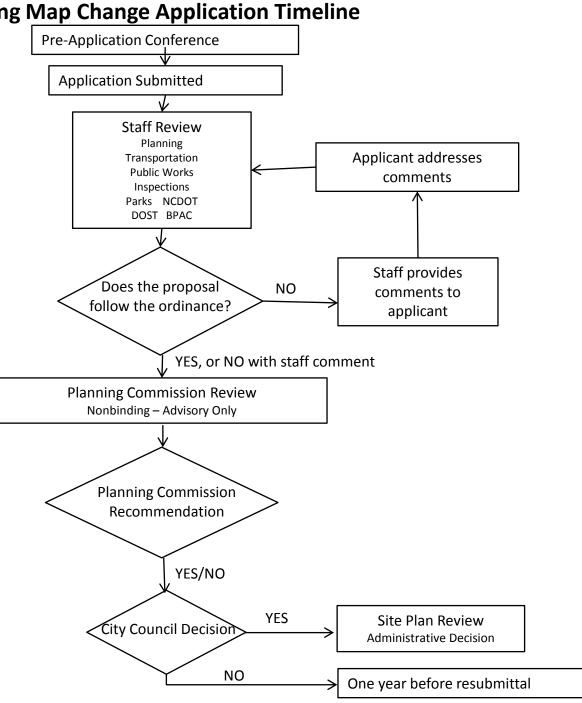
General Timeline

2-4 months

Two week notification

0-90 days

Approximately eight weeks after Planning Commission recommendation; two week notification



Quasi-Judicial Processes

- Most cases heard by appointed board
- Limited discretion
- Decision based on sworn testimony
- Examples
 - Use Permit
 - Variance
 - Certificate of Appropriateness
 - Appeal



Quasi-Judicial Processes

- Board of Adjustment
 - Variance
 - Special Use Permit (Minor)
 - Administrative Appeal
- Historic Preservation Commission
 - Certificates of Appropriateness
- ☐ City Council/BOCC
 - Major Special Use Permits



Administrative Processes

- Staff only
- No discretion
- No public input
- Does the proposal follow the ordinance?
- Examples
 - Site Plans
 - Plats
 - Common Signage Plans

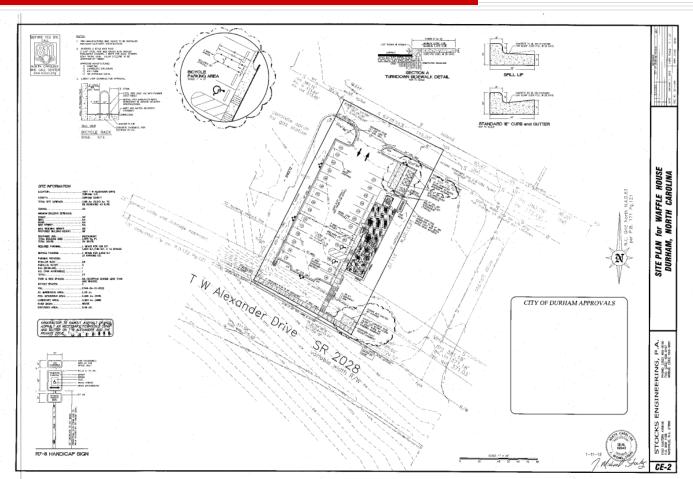


What is a Site Plan?

- Detailed drawing of the proposed development
- Must demonstrate that all regulations in the UDO are being met
- If all regulations are met, the site plan must be approved



Site Plan Example





Summary

- Three types of approvals
 - Legislative
 - Quasi-Judicial
 - Legislative
- Comprehensive Plan is policy; Zoning is legal authority for use of land
- Unified Development Ordinance enforces zoning

Unified Development Ordinance



Unified Development Ordinance

- All the rules for zoning and subdivision in Durham City and County
 - Does not include building or housing codes
 - Divided into 16 Articles
 - * Most citizens concerned with:
 - Article 5 Use
 - Articles 6 & 7 Density, Setbacks, Height
 - Article 8 Environmental Protection
 - Article 9 Buffering (including fences)
 - Article 14 Nonconformities



UDO/Zoning Regulations

- □ Use
- Density
- Height
- Building Location
- □ Riparian Buffers
- Landscaping
- Project Buffers
- Parking and Loading

- ☐ Signs
- Design Requirements
- Infrastructure
 - Roads/Streets
 - Water/Sewer
- Nonconformities
- Enforcement and Penalties

Use Table

																							ľ
				RESI	DENTIAL					NC	ONRES	SIDEN	TIAL				Р	LANNE	D		DESIGN		
USE CATEGORY	SPECIFIC USE	RR	RS	RS-M	RU	RU-M	RC	ರ	CN	Ю	CG	SRP	SRP-C ³	=		PDR	nc	9	۵	MU	DD	9	NOTES:
COMMERCIAL I	USES																		10	_			
	All indoor recreation, except as listed below							Р	Р		Р		Р	Р				‡	‡	‡	Р	Р	
Indoor	Adult establishment	Ĭ												L/m	L					,			5.3.4A
Recreation	Electronic gaming operations										Ľ			L				‡L	4	5	6		5.3.4J
	Firing range, indoor										L			L	L			‡L					5.3.4K
	Nightclub or bar							L	L/m		L		L	L				‡L	d	‡L	L	L	5.3.4P
	All outdoor recreation, except as listed below	L/m							L/m		L		L	L.				‡L		‡	L	Ĺ	5.3.4Q
	Campground, summer camp, RV camp	m																					2
	Drive-in theatre										L/m			L/m									5.3.4H
Outdoor	Firing range, outdoor, archery, skeet	L/M													L/M								5.3.4L
Recreation	Golf course, country club, swim club, tennis club	JL.	(L)	L	L	Ц					-1		4			‡L	‡L		‡L	‡L	f.		5.3.4M
	Marina, boating facility	М																					
	Paintball	L/m									L/m			L/m									5.3.4R
	Stadium, arena									М				М			‡			‡M	М		
Overnight Accommodati	Hotel, motel, and extended stay residences							L		L	L		L	L			‡L	‡L	‡L	‡L	L	Ľ	5.3.4N
Accommodati ons	Bed and breakfast	L/m	L/m	L/m	L/m	L/m	L/m	L	L	٦	L					‡L/ m		‡L		‡L	L	Ľ	5.3.4D
	Diet house								Р	Р	Р					‡		‡		‡	Р	Р	0
Parking, Commercial	All commercial parking							L		L	L	Р	Р	Ĺ	Р			‡		‡L	L	Ľ	5.3.4F
Restaurants	All restaurants, except as listed below							Р	Р		Р	L	P	Р		‡		‡	‡	‡	Р	P	5.3.7
	Drive-through facilities								L		L		L	L		‡		‡L	‡L	‡L			5.3.41

Density

- For single family homes, the minimum lot size is regulated
 - RS-20 = 20,000 square foot minimum lot size
 - RU-5 = 5,000 square foot minimum lot size
 - More complicated for multifamily

	RL	J-5	RU-	5(2)		RU-M	
Dimensional Standard	Min.	Max.	Min.	Max.	Min.	Max. without a Development Plan	Max. with a Development Plan (see paragraph 3.5.6)
Residential Density (units per acre)				3			
Project Under 4 Acres	×===×	8.0	5551	8.0	N E 12 /	12.0	20.0
Project 4 Acres or Greater	6.0	8.0	6.0	8.0	8.0	12.0	20.0
Open Space (% of gross area) ¹	5		5		6	-	
Site Area Site Width Lot Area			Se	e Sec. 7.1, I	Housing T	-ypes	
Height (feet)		35	200	35	1222	.5	55



Intensity

1. Standards for the CN, OI, and CG Districts

		CN	(וכ	C	G
Dimensional Standard	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (square feet)	5,000		20,000	222	20,000	
Project Floor Area (square feet)	<u> </u>	20,000		<u> </u>		3
Lot Width (feet)	50	<u></u>	60	-0-0-0	100	3-11
Street Yard (feet)	25		25		25	3444
Side Yard (feet)	15		20		25	
Rear Yard (feet)	25		25		25	
Building Coverage (%) ¹		60		60		60
Height (feet)		35		50	444	50

¹Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.



Other Standards and Districts

- Infill
 - Have to match setbacks of other buildings on the same block
 - In many cases trumps setback standard
- Planned Districts
 - Can set their own setbacks and densities
 - ❖ PDR, UC, CC, MU, e.g.
 - Require a development plan



Other Standards and Districts

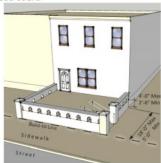
- Design Districts
 - Downtown and future rail areas
 - * Focus is on design rather than use
 - Stricter rules on building placement, type, and design, less emphasis on uses within buildings



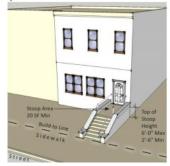
Sec. 6.12 Design Districts

- i. The raised court shall be:
 - a) A minimum of 30 inches and a maximum of four feet above street grade; and
 - b) More than 50% of the width of the building bay.
- ii. A stoop shall be:
 - a) A minimum 20 square foot landing area;
 - Raised a minimum of 30 inches and a maximum of six feet above the average grade at the street provided that the stoop corresponds to building entries; and
 - c) Less than 50% of the width of the building bay.



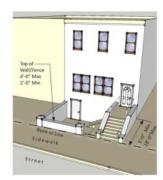


Stoop:



(b) A light court can be created when the ground level of the forecourt is lowered below the average adjacent street grade. The light court shall be a usable space accessible from the street and/or the building.

Light Court:





Riparian Buffers

- Buffers to either side of a perennial or intermittent stream or a wetland
- No buffer required for ephemeral streams
- Width of buffer dependent on proximity to reservoir and development tier



Tier					Wat	ershe	Prote	ection	Overla	ay	· · ·			
	No	one	M/L	.R-A	M/L	R-B	E-	·A	E-	В	F/.	J-A	F/.	I-B
Downtown and Co	mpact	Neighb	orhood											35
Stream Type	Р	1	Р	1	P	_	Р		Р	1	P	1	Р	1
Width	50	50	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Urban	1.0								8.00		. 1			22
Stream Type	P	d	Р	J	Р	_	Р		P	Į.	P	1.	P	\mathbf{I}_{i}
Width	50	50	NA	NA	NA	NA	NA	NA	100	50 ¹	NA	NA	100	50 ¹
Suburban														
Stream Type	P	1	Р	1	Р	_	Р	j	Р	I	P	1	Р	1
Width	50	50	150	50	150	50	150	50	100	50 ¹	150	100	100	50 ¹
Rural		84			**		58		VV	S 27	70		5	
Stream Type	Р	i	Р	Î	Р	1	Р	1	Р	l l	Р	1	P	1
Width	50	50	150	50	150	50	NA	NA	100	50 ¹	150	100	100	50 ¹
¹ Stream buffer minimu	ım of 10	0 feet if a	high dens	ity option	is utilize	d per pa	ragraph	1 8.7.2B	.1					

Project Boundary Buffers

- Designed to "protect" uses that may be incompatible
- Regulated by zoning district, not use
- Buffer can include berm, landscaping, fencing, etc.



B. Project Boundary Buffer Table

				Z	NINO	ig dist	RICT C	F AD	JACEN	IT PRO	OPER	Υ					
	RR and PDR at Rural Density	RS-20, RS-10, RS-8 and PDR at Suburban Density	RU and PDR at Urban Density	RS-M, RU-M	RC	ū	CN	10	SRP	SRP-C (County Only)	MU	uc	00	CC	IL	dl	-
RR and PDR at Rural Density	0/ 0	0/ .2	.2/ .6	.2/	.2/ .8	0/ .2	.2/ .6	.2/ .6	.2/ .6	.2/ 1.0	.2/ .6	.2/ .6	.2/ .8	.2/	.2/ .8	.2/	.2/ 1.0
RS-20, RS-10, RS-8 and PDR at Suburban Density	.2/	0/	.2/	.2/ .6	.2/	0/ .2	.2/	.2/	.2/	.2/	.2/	.2/ .6	.2/	.2/	.2/	.2/	.2/
RU and PDR at Urban Density	.4/ .6	.2/ .4	0/	.2/ .6	.2/ .6	0/ .2	.2/ .6	.2/ .6	.2/ .6	.2/ 1.0	.2/ .6	.2/ .6	.2/ .8	.2/ .8	.2/ .8	.2/ .8	.2/ 1.0
RS-M, RU-M	.6/ .8	.4/ .6	.4/ .6	.2/ .4	.2/ .4	0/ .2	.2/ .6	.2/ .6	.2/ .6	.2/ 1.0	.2/ .6	.2/	.2/ .8	.2/ .8	.2/ .8	.2/ .8	.2/ 1.0
RC	.6/ .8	.4/ .6	.6	.2/ .4	0/	0/ .2	0/	.2/ .6	.2/ .6	.2/ 1.0	.2/ .6	.2/	.2/ .6	.2/ .6	.2/ .6	.2/ .6	.2/ 1.0
a	.2/	.2/	.2/	.2/ .2	.2/	0/	0/	0/	0/	0/	0/	0/	0/	0/	.2/ .4	.2/	.2/
CN	.6	.4/ .6	.4/ .6	.6	0/	0/	0/	0/	0/	.2/ .6	0/	0/	.2/ .6	.2/ .6	.2/ .6	.2/ .6	1.0
OI	.4/ .6	.4/ .6	.6	.4/ .6	.4/ .6	0/	0/	0/	0/	.2/ .6	0/	0/	.2/ .6	.2/ .6	.2/ .6	.2/	.2/ 1.0
SRP	.6	.6	.4/ .6	.4/ .6	.4/ .6	0/	0/	0/ 0	0/	0/ 0	0/	0/	.2/ .6	.2/ .6	.2/ .6	.2/ .6	.2/ 1.0
CN OI SRP SRP-C (County Only)	1.0	1.0	1.0	1.0	1.0	0/	.4/	.6	0/	0/	.6	.4/	.2/ 4	.2/	.2/	.2/	1.0
ми	.6	.6	.6	.6	.6	0/	0/	0/	0/	.2 .6	0/	0/	.6	.6	.6	.6	1.0
uc	.6 .6/	.6/	.4/ .6	.4/ .6	.6 .4/	0/	0/ 0	0/ 0	0/ 0	.2/ .6	0/	0/	.2/ .6	.2/ .6	.2/ .6	.2/ .6	.2/ 1.0
CG	.6/	.8	.8	.6/	.6 A/	0/	.6 .4/	.6	.6	.4	.6	.6	.4	.2/	.4	.2/	1.0
СС	.8	.8	.8	.8	.6	0 .2/	.6	.6	.6	.4	.6	.6	.4	.2/	.4	.2/	1.0
IL IP	.8	.8	.8	.8	.6 .4/	.2/	.6	.6	.6 .4/	.2/	.6	.6	.4	.4	.4	.2/	1.0
	.8/	.8 .8/	.8/	.8	.6 .8/	.2/	.6 .8/	.6 .8/	.6 .8/	.8/	.6 .8/	.6	.8/	.4 .8/	.4 .8/	.4	1.0
	1.0	1.0	1.0	1.0	1.0	.4	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	.4



RURAL AND SUBURBAN TIERS

Opacity	Min. Width	Alternative 1 Mixed Evergreen	Alternative 2 Deciduous	Alternative 3 Evergreen	Alternative 4 Overhead Utility			
		_	Plant Material Required Per 1	00 Linear Feet				
0.2	10 feet	1 Canopy Tree 0 Evergreen Tree 1 Deciduous Understory 2 Evergreen Understory 13 Shrubs	2 Canopy Trees 0 Evergreen Tree 2 Deciduous Understory 0 Evergreen Understory 12 Shrubs	0 Canopy Tree2 Evergreen Trees0 Deciduous Understory3 Evergreen Understory13 Shrubs	0 Canopy Tree0 Evergreen Tree3 Deciduous Understory2 Evergreen Understory10 Shrubs			
0.4	20 feet	3 Canopy Trees 1 Evergreen Tree 2 Deciduous Understory 5 Evergreen Understory 40 Shrubs	4 Canopy Trees 0 Evergreen Tree 6 Deciduous Understory 0 Evergreen Understory 38 Shrubs	0 Canopy Tree4 Evergreen Trees0 Deciduous Understory9 Evergreen Understory38 Shrubs	0 Canopy Tree 0 Evergreen Tree 7 Deciduous Understory 5 Evergreen Understory 30 Shrubs			
0.6	30 feet	6 Canopy Trees 1 Evergreen Tree 4 Deciduous Understory 9 Evergreen Understory 70 Shrubs	7 Canopy Trees 0 Evergreen Tree 10 Deciduous Understory 0 Evergreen Understory 67 Shrubs	0 Canopy Tree 7 Evergreen Trees 0 Deciduous Understory 16 Evergreen Understory 68 Shrubs	0 Canopy Tree 0 Evergreen Tree 12 Deciduous Understory 9 Evergreen Understory 53 Shrubs			
0.8	50 feet	6 Canopy Trees 1 Evergreen Tree 4 Deciduous Understory 10 Evergreen Understory 77 Shrubs	8 Canopy Trees 0 Evergreen Tree 11 Deciduous Understory 0 Evergreen Understory 73 Shrubs	0 Canopy Tree 8 Evergreen Trees 0 Deciduous Understory 17 Evergreen Understory 74 Shrubs	0 Canopy Tree 0 Evergreen Tree 13 Deciduous Understory 10 Evergreen Understory 58 Shrubs			
1.0	80 feet	7 Canopy Trees 1 Evergreen Tree 5 Deciduous Understory 12 Evergreen Understory 85 Shrubs	10 Canopy Trees 0 Evergreen Tree 13 Deciduous Understory 0 Evergreen Understory 80 Shrubs	0 Canopy Tree 10 Evergreen Trees 0 Deciduous Understory 20 Evergreen Understory 83 Shrubs	0 Canopy Tree 0 Evergreen Tree 16 Deciduous Understory 12 Evergreen Understory 65 Shrubs			

Nonconformities

- Use, structure, or lot that exists but not allowed by UDO
- Cannot "expand a nonconformity"
- Modifications can be allowed with a special use permit or variance from Board of Adjustment



Certificate of Appropriateness

- Required for exterior work in a *local* historic district
- □ Three types
 - Major & Minor Approval from Historic Preservation Commission
 - ❖ Administrative Approved by staff



Homework

- □ Last Class is May 31
- No dinner ⊗
- □ To be held in Council Chambers
- Review Mock Planning Commission materials

